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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:	Thomas Senn Thorsten Braun Simon Greter Frances Lamy	Group Art Unit: 2672
on:	PROCESS FOR PRODUCING AN ELECTRONIC COLOR INFORMATION DATA FILE AND PROCESS FOR COLOR COMMUNICATION	Examiner: C. Harrison
Serial No.:	09/835,465	Confirmation No.: 5999
Filed On:	April 17, 2001	(Docket No. 97634.00108)

SUBSTITUTE APPEAL BRIEF IN COMPLIANCE WITH 37 CFR § 41.37(c)(1)

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1. THE REAL PARTY IN INTEREST

The real party in interest in this appeal is Gretag-Macbeth AG. Ownership by Gretag-Macbeth AG is established by assignment document recorded in the U.S. Patent and Trademark Office on April 17, 2001 at Reel 011723, Frame 0988.

2. RELATED APPEALS AND INTERFERENCES

Appellant knows of no related patent applications or patents under any appeal or interference proceeding.

3. STATUS OF CLAIMS

Currently, claims 1-6, 8-26 and 28-44 (all pending claims) are rejected. The outstanding rejection of claims 1-6, 8-26, and 28-44 is appealed herein.

4. STATUS OF AMENDMENTS

There have been no amendments made after receipt of the final Office Action dated January 12, 2005.

5. SUMMARY OF CLAIMED SUBJECT MATTER

There are two independent claims (claims 1 and 21) in the application.

Referring to Figure 1, independent claim 1 is directed to a process for producing an electronic color information file (F) in a text format for color communication, wherein the electronic color information file (F) has at least one data set (D11-D17, Dn1-Dn17) describing the color impression of at least one color sample (M1, M2). (Specification, page 6, line 19 – page 8 line 11.) The process recited in independent claim 1 includes the step of making available the at least one data set (D11-D17, Dn1-Dn17) in a processor, and the step of coding the at least one data set (D11-D17, Dn1-Dn17) describing the color impression into a pure text format. (Specification, page 6, line 19 – page 8 line 11.) The process of independent claim 1 further recites the step of storing the at least one data set (D11-D17, Dn1-Dn17) describing the color impression in the color information file (F) in a pure text format, such that all the information data associated with the at least one color sample (M1, M2) is stored, and identifying, characterizing, and supplementing the at least one color sample (M1, M2) as information data in a pure text format containing objects in an open, expandable, hierarchically organized object structure in the color information file (F). (Specification, page 6, line 19 – page 8 line 11.)

Referring to FIG. 3, independent claim 21 is directed to a communication process for communicating information relevant for visual color impression of a color sample set (M1, M2) having at least one color sample (M1, M2). (Specification, page 8, lines 13 – 29.) The process recited in independent claim 21 includes the step of coding the information relevant for visual color impression (D11-D17, Dn1-Dn17) represented by at least one of measured data and manually produced value data into pure text, and the step of storing the coded information at a transmitter end in a color information file in a pure text format. (Specification, page 8, lines 13 – 29.) Independent claim 21 further recites the step of transferring the color information file (F) to a receiver by way of a communication medium and at the receiver end again displayed in visual form, wherein all the information data (D11-D17, Dn1-Dn17) associated with the at least one color sample (M1, M2) is stored. (Specification, page 8, lines 13 – 29.) The claimed process further includes identifying, characterizing, and supplementing the at least one color sample(M1, M2), which is stored as information data in a pure text format containing data objects in an open, expandable, hierarchically organized object structure in the color information file (F). (Specification, page 8, lines 13 – 29.)

For purposes of the present Appeal, the independent patentability of the dependent claims is not being argued and, thus, no additional description regarding the dependent claims is provided herein. Appellant respectfully submits that each of the dependent claims patentably distinguish over the art of record for at least the reasons noted herein with respect to the independent claims from which they depend.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The examiner rejects the claims on the following grounds:

A. Claims 1-6, 8-26, 28-38, 40-41, and 43-44 are obvious under 35 U.S.C. 103(a) based on the teachings of U.S. Patent No. 5,528,261 to Holt et al. ("Holt"); and

B. Claims 39 and 42 are obvious under 35 U.S.C. 103(a) based on the teachings of Holt in view of the teachings of U.S. Patent No. 6,515,690 to Back et al. ("Back").

The propriety of the foregoing claim rejections under 35 U.S.C. 103(a) is to be reviewed on appeal.

7. ARGUMENT

The issues on appeal are:

A. Whether claims 1-6, 8-26, 28-38, 40-41, and 43-44 are obvious under 35 U.S.C. 103(a) based on the teachings of U.S. Patent No. 5,528,261 to Holt et al. ("Holt"); and

B. Whether claims 39 and 42 are obvious under 35 U.S.C. 103(a) based on the teachings of Holt in view of the teachings of U.S. Patent No. 6,515,690 to Back et al. ("Back").

Appellant respectfully submits that claims 1-6, 8-26, 28-38, 40-41, and 43-44 are patentable over the teachings of Holt, and that claims 39 and 42 are patentable over the teachings of Holt in view of Back for at least the reasons set forth herein below.

A. Rejection of Claims 1-6, 8-26, 28-38, 40-41, and 43-44 under 35 U.S.C. §103(a) over Holt

The Examiner has rejected claims 1-6, 8-26, 28-38, 40-41, and 43-44 (the "present claims") under 35 U.S.C. 103(a) as being unpatentable over Holt. By the Office Action dated January 12, 2005, the Examiner both lodged this particular rejection for the first time, and made the rejection final, indicating that Appellant's prior amendment had necessitated the new grounds of

rejection and that arguments previously advanced by Appellant had been fully considered, but were not deemed persuasive. Appellant urges that the Examiner's final rejection is improper as to each of the present claims, and respectfully requests that the Board so find.

Appellant respectfully submits that the outstanding rejection of the present claims is improper for several reasons. First, in Holt, the Examiner has relied upon a primary prior art reference that is both inapposite and non-analogous, and therefore not properly applicable against any of the present claims in the context of the present 35 U.S.C. §103 rejection. The Examiner has also failed to set forth a sustainable *prima facie* case in support of the outstanding 35 U.S.C. §103 rejection of the present claims. This failure is evident in the fact that the outstanding rejection based on Holt: 1) fails to account for each and every claimed aspect/recitation of the present claims, either in the relied-upon Holt reference or elsewhere in the prior art; and 2) fails to identify a suggestion or motivation in the prior art to cause a person of skill in the art of creating color information files (hereinafter "the artisan") to modify the methods of Holt so as allegedly to arrive at the specifically recited subject matter of the present claims. Each of these bases is set forth in greater detail herein below.

1.) As a primary reference, Holt is both inapposite and non-analogous, and therefore not properly applicable against appellant's claims in the context of the outstanding obviousness rejection

The Examiner, in rejecting the present claims under 35 U.S.C. §103, acknowledges that Holt fails to teach the full subject matter of the present claims. More particularly, in rejecting the present claims as obvious over Holt, the Examiner avers that Holt "fails to specifically disclose a pure text format." January 12, 2005 Detailed Action, p. 3, line 11. (As will be discussed in greater detail herein below, the shortcomings of Holt with respect to the subject matter of the present claims are far more extensive than the noted acknowledgement.)

According to the Manual of Patent Examining Procedure (MPEP):

> The Examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, must then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)

MPEP, § 2141.01(a) (citation and quotations in original).

As related in the Summary of Invention section of this Appeal Brief, the present claims are generally directed to: (a) a process for producing an electronic color information file in which a data set associated with a color impression of a color sample is coded and stored in an electronic color information file in a text format for color communication (independent claim 1); and (b) a process for communicating information relevant for visual color impression of a color sample set in which information relevant for visual color impression is coded into pure text and stored at a transmitter end in a color information file, and the color information file is transferred to a receiver by way of a communication medium, at which it is again displayed in visual form. Appellant's field of endeavor is therefore best understood as the production of color information files for facilitating communication of sample color impressions.

Holt describes a computer system 10 in which data processor 12 thereof is preprogrammed with a software architecture 54 capable of performing a color matching function. Holt, col. 4, lines 62-64, and col. 22, lines 51-53. In use, the system accepts raw color data from an input device (e.g., a color scanner) operating in a first color space (e.g., RGB), and corrects and/or transforms the raw color data as necessary to permit it to be displayed by an output device (e.g., a color printer) operating in a second color space (e.g., CMYK). Holt, col. 22, line 53 through col. 23, line 8. More particularly, Holt discloses a high-speed color matching process by which the disclosed system receives a stream of input data in one color class format and returns a stream of output data in another class format. Holt, col. 23, line 16 through col. 24, line 3. Accordingly, the field of endeavor of Holt is that of high-speed translation of raw color data passing between input and output peripheral devices that ordinarily would not be capable of communicating with each other.

The specialized application around which the disclosure of Holt is focused (i.e., providing a translation interface between incompatible color input and output devices) is best conceived of as a data flow process that emphasizes or encourages a high-speed, high-volume through-put of data, rather than as a process via which raw data is received from an input device and coded and stored into an information file in preparation for further communication in discrete "file" form. Accordingly, the disclosure contained in Holt must be considered to relate to an entirely different field of endeavor than that in which Appellant is engaged.

As discussed in the Background of the Invention and Summary of the Invention sections of Appellant's specification, Appellant is concerned with the use of data exchange formats, such as the IT8 format, in which the description of each color sample is listed in tabular form. More particularly, Appellant states:

> This type of storage or transmission runs into limitations as soon as not the same type of measurement values or further associated attributes such as, for example, color recipes, images, and so on, are used for each color probe. When using the classical approach of tables for the storage of these objects, the corresponding table would thereby need to be expanded by one or more columns for each newly added attribute. This would lead to large and complex tables. Many data fields in such a table would then not be occupied and would represent an unnecessary load for the processing computer. ... It is the goal of the invention to provide a process for electronically communicating the color data and the colors associated therewith or storing them in a manner suitable for data exchange.

Page 4, line 28 to page 5, line 7.

In distinct contrast and as described in the Background of the Invention section of Holt, prior software operating systems architectures were:

> ...limited in their color processing capability. One limitation is that the operating systems architecture may not be able to support a given peripheral device functioning in a color space for which the architecture was not designed or could not be modified to support. Also a prior architecture may be capable of supporting and matching color of a particular peripheral device, such as a color monitor, having its own color space, gamut and profile characteristics to another peripheral device, such as a particular color printer having its own such color characteristics.

Holt, col. 2, lines 30-40. Such limitations result in the architectures of the operating systems being unable to support certain different types of peripheral devices, thereby limiting utility. Accordingly, the Holt system:

> ...provides a unique operating systems architecture and methods that support color processing on a global scale. The operating systems color architecture and methods support any number of different peripheral color devices, as well as any different number of color matching schemes. In other words, the color architecture of the present invention is not tied or constrained to any one peripheral device manufacturers approach to color usage for its devices...

Holt, col. 2, line 65 through col. 3, line 6.

The problem with which Holt was concerned (i.e., operating systems color architectures having designs limited to specific peripheral devices) is best conceived of as a problem of compatibility between processing systems and peripheral devices, and/or between different peripheral devices, as opposed to a far different problem related to the efficiency (or lack thereof) of available data file or data storage formats used in conjunction with transmitting information relating

to color sample descriptions. Accordingly, given the altogether different purpose/focus of Holt, Appellant respectfully submits that an artisan would not consider the teachings of Holt to be pertinent to the particular problem with which Appellant (i.e., the named inventors) were concerned.

Thus, Appellant respectfully submits that Holt – which is directed to an altogether different subject matter – is non-analogous with respect to Appellant's field of endeavor, and that Holt is not properly relied upon in rejecting the present claims.

2.) The Examiner has failed to establish a *prima facie* case of obviousness in connection with the outstanding 35 U.S.C. §103 rejection

The Examiner has not borne his burden of proof regarding *prima facie* obviousness. The following passage from the MPEP summarizes the Examiner's burden in this regard.

> The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of nonobviousness. ... The initial evaluation of *prima facie* obviousness ... relieves both the examiner and the applicant from evaluating evidence beyond the prior art and the evidence in the specification until the art has been shown to suggest the claimed invention. ... To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences", conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon the applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

MPEP, §2142.

The MPEP also sets forth three basic criteria that must be met by the Examiner in order to establish a *prima facie* case of obviousness, to wit:

> First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination ... must ... be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Id (citation in original). With respect to the "suggestion or motivation" requirement, the MPEP provides further guidance as follows:

> The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to be obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). ... When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper. Ex parte Skinner, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986).

Id (citations in original).

A close reading of Holt reveals that it neither teaches, nor suggests, *with respect to a data set describing the color impression of a color sample,* any of: (1) coding such a data set into a text format (whether pure or otherwise); (2) storing such a data set (whether in a text format or otherwise) in a color information file; (3) storing in the color information file information data identifying, characterizing, and supplementing such color sample; and/or (4) storing such information data in the color information file in a format containing data objects and having an open, expandable, and hierarchically organized object structure. Also, the Examiner has thus far failed to indicate the presence of any motivation or suggestion provided by Holt, or provided elsewhere in the prior art, to modify Holt as suggested by the Examiner to arrive at the subject matter of the present claims. In this regard, the Examiner has either overlooked or declined to address clearly contrary teachings in the prior art, most particularly in Holt, as well as other compelling evidence of nonobviousness. The following subsections further demonstrate the absence of a *prima facie* case of obviousness on the current record.

a.) *The deficiencies in Holt render the Examiner's obviousness position untenable.*

The following is a reproduction, in relevant part, of the outstanding obviousness rejection of the present claims:

> As per independent claim 1, Holt discloses a process for producing an electronic color information file for color communication, wherein the file includes at least one data set describing the color impression of at least one color sample comprising making available one data set (Fig. 6; col. 4-5. ll. 66-2), coding the at least one data set describing the color impression into a text format (i.e., the color architecture is implemented in object oriented programming design using any one of multiple text based programming languages which code/represent the data for processing, such as calorimetric data, e.g., gamut, attributes, e.g. profile and tonal reproduction curve)(col. 4, ll. 1-20; col. 6, ll. 15-27; Fig. 5), storing the data set describing the color impression in the color information file in a text format (i.e. storing the encoded data in a file)(col. 9, ll. 26-33; col. 6, ll. 10-20; abstract), all the information associated with the color sample (col. 5, ll. 21-25) and one of [sic]

> identifying, characterizing, and supplementing the one color sample are stored as information containing data objects (col. 5, ll. 40-45) in an open, expandable, hierarchically organized object structure in the color file (abstract).

January 12, 2005 Detailed Action, page 2, line 21 through page 3, line 10.

A close review of the passages/figures of Holt cited by the Examiner reveals that key aspects of the Examiner's obviousness position do not find support in Holt, and that the Examiner's analysis of Holt suffers from internal inconsistencies resulting in an analytical breakdown. For example, none of Holt, col. 4, ll. 1-20, or Holt, col. 6, ll. 15-27, or Holt, Fig. 5, discloses coding a data set describing a color impression of a color sample into a text format. Rather than being associated with color impressions of *particular color samples*, Holt's color gamut, color profile, and tonal reproduction curve are simply associated with *particular color peripheral devices* (i.e., they are unrelated to, and are separate and distinct from, any color impression of a color sample that such a device could conceivably yield). Put another way, Holt employs such data constructs (i.e., gamut, profile, tonal reproduction curve) as processing tools for raw color data and/or as standards for use in matching or comparing raw color data. In fact, Holt separately refers to such raw color data (see, e.g., Holt, col. 22, ll. 53-54, as well as Holt's use of the term "color information" (Holt, col. 4-5. ll. 66-2)), thereby clearly indicating that such data constructs as color gamut, color profile, and tonal reproduction curve are simply not to be confused or conflated with color impression data. Further, FIGS. 6A and 6B of Holt, and the description relating thereto, refer to the transformation of color information as between different types of color spaces, but importantly, Holt's FIGS. 6A and 6B do *not* teach or imply the *coding* of data describing a color impression of a color sample *into a text format* as required by each of the present claims.

Moving to a further element of the outstanding obviousness rejection, none of Holt, col. 9, ll. 26-33, Holt, col. 6, ll. 10-20, or the Holt abstract discloses storing a data set describing the color impression in a color information file in a text format. Rather, each of these passages refer instead to aspects of a color model architecture 54 that functions to transform or convert color impression data, but that cannot fairly be described as storing color impression data in any readily cognizable way, much less in the form of a color information file, and/or in a text format. The Examiner's citations in this regard, rather than building a sustainable obviousness rejection, instead appear to reflect a misapprehension of the teachings of Holt, at least insofar as the same relate to the subject matter of the present claims. This misapprehension includes a persistent misperception by which the Examiner conflates of the way in which Holt handles raw color data from a peripheral

device (e.g., by subjecting it to in-flow conversion or translation at high through-put speeds and without storage) with how Holt handles and/or utilizes device-specific data constructs, such as color gamut, color profile, and tonal reproduction curves (e.g., by converting these tools or standards into Object-Oriented Programming (OOP) objects for subsequent use in translating the raw color data which is separately fed into the system).

Moving to yet a further element of the outstanding obviousness rejection, none of Holt, col. 5, ll. 40-45; Holt, col. 9, ll. 26-33; Holt, col. 6, ll. 10-20; or the Holt abstract, whether considered together or separately, teaches that all the information data associated with the color sample and identifying, characterizing, and supplementing the color sample are stored as information data in the color information file in a text format containing data objects in an open, expandable, hierarchically organized object structure, as recited in Appellant's claims. Presuming only for present purposes that the color model architecture 54 bears some minimal structural similarity to the claimed color information file (e.g., presuming the color model architecture 54 has an open, expandable, hierarchically organized object structure), this would say absolutely nothing about how Holt handles information associated with a color sample and identifying, characterizing, and supplementing the color sample. More particularly, it remains clear that the Examiner has made the mistake of reciting a description of the manner in which Holt organizes or utilizes data constructs bearing no direct relation to color sample information (e.g., color gamut, color profile and/or tonal reproduction curves), where for analytical consistency, the focus should instead have been on the (entirely different) manner in which Holt handles information data *associated with the color sample.*

b.) *The artisan would not have been motivated to modify Holt to arrive at the subject matter of Appellant's claims.*

As the foregoing analysis demonstrates, Holt has significant shortcomings relative to Appellant's claims. For example, Holt discloses none of: (a) coding a data set describing a color impression of a color sample into a text format; (b) storing a data set describing the color impression in a color information file in a text format; or (c) storing, as information data in the color information file in a text format containing data objects in an open, expandable, hierarchically organized object structure in the color information file, all the information data associated with the color sample and identifying, characterizing, and supplementing the color sample.

Aside from ignoring many of the deficiencies in Holt discussed herein, the outstanding obviousness rejection attempts to cure the limited deficiencies in Holt that are acknowledged to exist based on an "obvious-to-a-person-of-ordinary-skill" argument. The Examiner's cure-all argument is expressed as follows:

> Holt fails to *specifically* disclose a *pure* text format. ... Holt discloses coding the data into text by implementing an object-oriented programming design (col. 5, ll. 65-67; col. 6, ll. 15-27). ... It would have been obvious to one of skill in the art to incorporate the [*sic*] a *pure* text format with the disclosure of Holt because an object-oriented programming design uses any one of multiple text based programming languages to code/represent the color data to be processed, where text based programming languages implement a pure text format.

January 12, 2005 Detailed Action, p. 3 lines 11-18 (emphasis added).

First, Appellant respectfully submits that Holt fails to teach or suggest coding a data set describing a color impression of a color sample into a text format, or storing same in any way whatsoever, whether in a text format or otherwise. Moreover, Appellant respectfully submits that – contrary to the Examiner's position – Holt fails to teach or suggest a *pure* text format for coding and storing. As noted previously, the Examiner's position appears to be premised on an improper extension of the teachings of Holt. More specifically, the Examiner appears to consider a pure text format to be a natural or obvious extension of the general structure of the object-oriented programming design of the color model architecture 54 disclosed in Holt. This stance, however, does not address the fact that the structure and function of the color model architecture 54 arises from its use as a tool for processing raw color data, and as such does not disclose anything relating to whether such raw color data is to be coded in any sort of text format, much less a pure text format, or relating to whether such raw color data is to be stored at all, much less in any particular format (e.g., text-based, pure text, or otherwise).

Simply stated, Holt neither teaches nor suggests a pure text format. Moreover, the Examiner has posited that an artisan would have considered it obvious to incorporate a pure text format with the disclosure of Holt without a clear and unmistakable technical line of reasoning underlying such position. The present record is devoid of any concrete support for the proposition that it would be obvious to adopt a pure text format – as expressly claimed by Appellant – e.g., citation to a standard work or treatise in the field of color information files. In the absence of some support for the Examiner's position that adoption of a pure text format would have been obvious to a person skilled in the art, the outstanding obviousness rejection is improper.

Indeed, Holt emphasizes the desirability of speed in color matching/color processing, referring to raw color data as an "input pixel stream" and translated color information as an "output pixel stream" (Holt, col. 23-24, lines 16-3). As such, Holt must be seen as counseling against or teaching away from modifying its operating systems architecture to include an additional, unnecessary, and arguably inefficient and time-wasting step of storing information data associated with the color sample.

Other reasons exist for concluding that bridging the *actual* gap between Holt and the subject matter of the present claims would not be bridged by an artisan in view of the teachings of Holt. For example, by adding unnecessary data coding and storage steps, Holt would be at least partially converted into a file generating system. Such a modification would render Holt unsatisfactory for its intended purpose as a through-put oriented color translation processor. Clearly, a modification that would defeat the intended purpose of Holt would not be obvious to an artisan. *See* In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Taking the Examiner's modification proposition to its ultimate conclusion, the essentially uninterrupted data flow taught by Holt from a color peripheral device input, through the translation processor, and to a color peripheral device output, would need to be interrupted by diverting the flow of data into a file, and then transmission and reading of such file -- as necessary -- in order to display its contents using the downstream peripheral device. This would entirely change the basic principle of operation of Holt, which is that of an uninterrupted flow of data associated with a color sample through the system, such flow being converted along the way for purposes of enabling it to be displayed in a new color space. For the suggested modification to so change the basic principle of operation of Holt provide clear support to Appellant's position that the Appellant's claimed invention would not have been obvious to an artisan based on the teachings of Holt. *See* In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Indeed, Appellant respectfully submits that the Examiner's assertion as to the obviousness of adopting a pure text format (based on the object-oriented programming design of Holt) is unsupported and conclusory. Such conclusory statements/conclusions cannot sustain an obviousness rejection. *See, e.g.,* In re Lee, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed Cir. 2002) ("'[C]ommon knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the

agency's obligation .... The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies."). Since the Examiner acknowledges that Holt does not disclose the use of a pure text format, and the present record does not support the proposition that an artisan would consider a pure text format to be obvious based on the object-oriented programming teachings of Holt, Appellant respectfully submits that the outstanding obviousness rejection based on Holt is untenable.

* * * * * * * * * * *

In conclusion, Holt is inapposite and non-analogous when considered in light of the subject matter of the present application. Therefore, an obviousness rejection based on the teachings of Holt is untenable. Moreover, the present claims are directed to a process that patentably distinguishes over Holt, in that there is no teaching or motivation in Holt that would lead an artisan to arrive at Appellant's claimed invention based on the teachings of Holt. Rather, given the intended operation and use of the Holt system, an artisan would be dissuaded from modifying Holt in the manner suggested by the Examiner. For at least the foregoing reasons, Appellant respectfully submits that the Examiner's rejection of the present claims based on Holt is improper, and accordingly requests reversal of such rejection and early allowance of the present claims.

B. Rejection of Claims 39 and 42 under 35 U.S.C. §103(a) over Holt in view of Back

The foregoing discussion and analysis contained in section 7.A. above is incorporated in this section in its entirety.

Claims 39 and 42 depend, at least ultimately, from claims 1 and 21, respectively. Accordingly, Appellant respectfully submits that claims 39 and 42 are allowable for at least the reasons noted with respect to independent claims 1 and 21, herein above. Appellant respectfully submits that the Examiner's rejection of claims 39 and 42 is improper, and accordingly requests reversal of such rejection and early allowance of claims 39 and 42.

C. Conclusion

For the reasons cited above, Appellant respectfully submits that this application is in condition for allowance and request reversal of the outstanding rejections and early allowance of

this application. If there are any additional charges with respect to this Appeal or otherwise, please charge them to Deposit Account No. 50-1402 maintained by Appellant's attorneys.

Respectfully submitted,

Date: May 11, 2006

By: _____

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Basam E. Nabulsi
Name of applicant, assignee, or Registered Representative

Signature

5/11/06
Date of Signature

8. APPENDIX A – CLAIMS APPENDIX

Appealed Claims

1. Process for producing an electronic color information file in a text format for color communication, wherein the electronic color information file has at least one data set describing the color impression of at least one color sample, comprising the steps of:

making available the at least one data set in a processor;

coding the at least one data set describing the color impression into a pure text format, and

storing the at least one data set describing the color impression in the color information file in a pure text format, such that all the information data associated with the at least one color sample and identifying, characterizing, and supplementing the at least one color sample are stored as information data in a pure text format containing data objects in an open, expandable, hierarchically organized object structure in the color information file.

2. Process according to claim 1, wherein each data object is labeled with a characterizing type description selected from a group of predefined type descriptions, wherein the type description provides details on the structure and content of the data object, and the data type description of the data object is stored in the color information file in defined relation to the information data of the data object.

3. Process according to claim 1, wherein at least one data object itself includes at least one hierarchically subordinate data object, wherein each subordinate data object is labeled with a characterizing type description selected from a predefined group of type descriptions, wherein the type description provides details on the structure and content of the data object, the type description of the subordinate data object being stored in the color information file in defined relation to the information data of the subordinate data object.

4. Process according to claim 3, wherein a name is associated with at least one of the data object of the uppermost level of the hierarchy and the data objects respectively subordinate to a data object, which name defines the respective data objects and is stored in the color information file in defined relation to the respective data objects.

5. Process according to claim 3, wherein an explanatory description is associated with at least one of the data object of the uppermost level of the hierarchy and the data objects respectively subordinate to a data object, which explanatory description defines the respective data objects and is stored in the color information file in defined relation to the respective data objects.

6. Process according to claim 1, wherein at least one data object includes a subordinate data object which represents a connection pointer to another data object within or outside the color information file.

8. Process according to claim 1, wherein at least one data object includes a binary data object as information data, wherein this binary data object is stored in the color information file as symbols in MIME- compatible format.

9. Process according to claim 1, wherein the hierarchically organized object structure of the data objects is built on the basis of a page description.

10. Process according to claim 2, wherein the step of storing of the information data which are associated with the at least one color sample and at least one of identify, characterize, and complement the at least one color sample is carried out by arbitrarily selecting from a predefined group of data object types.

11. Process according to claim 10, wherein the predefined group of data object types can be expanded with additional data object types.

12. Process according to claim 10, wherein the predefined group of data object types includes at least data objects for spectral data and calorimetric data.

13. Process according to claim 12, wherein the predefined group of data object types additionally includes data objects for further information data relevant for the visual impression of the color.

14. Process according to claim 12, wherein the predefined group of data object types additionally includes data objects for ICC profiles, measurement conditions, light source data and device profiles.

15. Process according to claim 12, wherein the predefined group of data object types additionally includes data objects for image data.

16. Process according to claim 12, wherein the predefined group of data object types additionally includes at least one of data objects for image data and substrate describing data, wherein the image data preferably represent structure information such as surface condition or graininess of the at least one color sample to be communicated.

17. Process according to claim 12, wherein the predefined group of data object types additionally includes data objects for supplementary data representable in at least one text format.

18. Process according to claim 1, wherein any combination of emission, remission and at least one of transmission spectra and colorimetric data are stored in the color information file.

19. Process according to claim 18, wherein emission spectra of an illumination light source and remission spectra of the at least one color sample are stored in the color information file such that the illumination light source can be taken into consideration by way of a color model for the visual representation of the at least one color sample on a screen.

20. Process according to claim 14, wherein an input profile and several output profiles are assigned to a color sample and stored in the color information file, and wherein the input profile is used to recalculate a color sample from a device dependent color space into a device independent color space, and wherein the output profiles are used to recalculate the color location of the color sample from the device independent color space into a selected device dependent color space and to display the color location therein.

21. Communication process for communicating information relevant for visual color impression of a color sample set having at least one color sample, comprising the steps of:

coding the information relevant for visual color impression represented by at least one of measured data and manually produced value data into pure text;

storing the coded information at a transmitter end in a color information file in a pure text format; and

transferring the color information file to a receiver by way of a communication medium and at the receiver end again displayed in visual form, wherein all the information data associated with the at least one color sample and identifying, characterizing, and supplementing the at least one color sample, being stored as information data in a pure text format containing data objects in an open, expandable, hierarchically organized object structure in the color information file.

22. Communication process according to claim 21, wherein each data object is labeled with a characterizing type description selected from a group of predefined type descriptions, wherein the type description provides details on the structure and content of the data object, and the data type description of the data object is stored in the color information file in defined relation to the information data of the data object.

23. Communication process according to claim 21, wherein at least one data object itself includes at least one hierarchically subordinate data object, whereby each subordinate data object is labeled with a characterizing type description selected from a predefined group of type descriptions, whereby the type description provides details on the structure and content of the data object, the type description of the subordinate data object being stored in the color information file in defined relation to the information data of the subordinate data object.

24. Communication process according to claim 21, wherein a name is associated with at least one of the data object of the uppermost level of the hierarchy and the data objects respectively subordinate to a data object, and wherein the name defined the respective data objects and is stored in the color information file in defined relation to the respective data objects.

25. Communication process according to claim 21, wherein an explanatory description is associated with at least one of the data object of the uppermost level of the hierarchy and the data

objects respectively subordinate to a data object, and wherein the explanatory description defines the respective data objects and is stored in the color information file in defined relation to the respective data objects.

26. Communication process according to claim 21, wherein at least one data object includes a subordinate data object which represents a connection pointer to another data object within the color information file.

28. Communication process according to claim 21, wherein at least one data object includes a binary data object as information data, wherein the binary data object is stored in the color information file as symbols in MIME- compatible format.

29. Communication process according to claim 21, wherein the hierarchically organized object structure of the data objects is built on the basis of a page description language.

30. Communication process according to claim 22, wherein a predefined amount of data object types is made available, which define the type and structure of typical information data at least one of identifying, characterizing, and supplementing a color sample, an arbitrary selection of data object types from at least one of the predefined amount of data object types and an arbitrary combination of these data object types being used for storage of the information data assigned to the at least one color sample and at least one of identifying, characterizing, and supplementing the at least one color sample.

31. Communication process according to claim 30, wherein the predefined group of data object types includes at least data objects for spectral data and calorimetric data.

32. Communication process according to claim 30, wherein the predefined group of data object types additionally includes data objects for further information data relevant for the visual impression of the color.

33. Communication process according to claim 30, wherein the predefined group of data object types additionally includes data objects for ICC profiles, measurement conditions, light source data and device profiles.

34. Communication process according to claim 30, wherein the predefined group of data object types additionally includes data objects for image data.

35. Communication process according to claim 30, wherein the predefined group of data object types additionally includes data objects for at least one of image data and substrate describing data, whereby the image data preferably represent structure information of the at least one color sample to be communicated.

36. Communication process according to claim 30, wherein any combination of emission, remission and transmission spectra, and calorimetric data are stored in the color information file.

37. Communication process according to claim 36, wherein emission spectra of an illumination light source and remission spectra of the at least one color sample are stored in the color information file, and at the receiving end the illumination light source is taken into consideration by way of a color model and the stored emission spectra for the visual representation of the at least one color sample on a screen.

38. Communication process according to claim 31, wherein an input profile and several output profiles are assigned to a color sample and stored in the color information file, and wherein the color sample is recalculated from a device dependent color space into a device independent color space, and wherein the color location of the color sample is recalculated by way of the output profiles from the device independent color space into a selected device dependent color space and displayed therein.

39. Process according to claim 9, wherein the hierarchically organized object structure of the data objects is built on the basis of Extensible Markup Language.

40. Process according to claim 10, wherein the predefined group of data object types includes device dependent color data.

41. Communication process according to claim 21, wherein at least one data object includes a subordinate data object which represents a connection pointer to another data object outside of the color information file.

42. Communication process according to claim 21, wherein the hierarchically organized object structure of the data objects is built on the basis of the Extensible Markup Language.

43. Communication process according to claim 30, wherein the predefined group of data object types includes device dependent color data.

44. Communication process according to claim 35, wherein the structure information includes at least one of surface condition and graininess.

9. APPENDIX B – EVIDENCE APPENDIX

NONE: No evidence was submitted in connection with *ex parte* prosecution of this application, including specifically evidence pursuant to §§ 1.130, 1.131 or 1.132 or any other evidence entered by the examiner and relied upon by appellant.

10. APPENDIX C – RELATED PROCEEDINGS APPENDIX

NONE: There are no related proceedings associated with this application or this appeal.